



**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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Order Instituting Rulemaking to Consider the Adoption of a  
General Order and Procedures to Implement the Digital  
Infrastructure and Video Competition Act of 2006.

Rulemaking 06-10-005  
(Filed October 25, 2006)

**REPLY COMMENTS OF THE GREENLINING INSTITUTE ON PHASE II**

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June 15, 2007

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**I. INTRODUCTION: CONSISTENCY IN THE COMMISSION’S ROLE**

The Greenlining Institute (“Greenlining”) respectfully submits the following reply comments to the California Public Utilities Commission (“Commission” or “CPUC”) addressing the issues identified by the May 7, 2007 Scoping Memo reserved for Phase II of this proceeding for the implementation of the Digital Infrastructure and Video Competition Act of 2006 (“DIVCA” or “the Act”), and the opening comments submitted by the parties to the proceeding.

Greenlining firmly believes the Commission must be consistent in interpreting DIVCA’s mandates and its role in enforcing DIVCA. Opening comments from several carriers indicated a belief that the Commission should adhere strictly to DIVCA’s provisions in several areas, most notably reporting requirements (or lack thereof), yet at the same time advocated for the Commission to greatly expand its role by creating more relaxed build-out requirements for carriers with fewer than 1,000,000 telephone customers.<sup>1</sup> Greenlining respectfully submits that if the Commission wishes to adhere strictly to DIVCA’s provisions with respect to its

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<sup>1</sup> Opening Comments of the Small LECs, p. 2-5; Opening Comments of SureWest TeleVideo, p. 1-6. Opening Comments of Verizon (p. 1-4) and Opening Comments of AT&T California (p. 1-3) discuss reporting requirements but do not address small franchise holder build-out requirements.

enforcement role,<sup>2</sup> it must do so *consistently*, without favoring the interests of potential franchise holders over the interests of the communities DIVCA seeks to benefit. Requiring franchise holders to report on various aspects of service provision to underserved communities, allowing for intervenor compensation, and providing for public hearings and the opportunity to protest problematic franchise applications would all allow the Commission to ensure that franchise holders truly are serving the communities DIVCA intends to benefit. Relaxed build-out standards for smaller carriers, on the other hand, allow carriers to take advantage of the streamlined state franchising system without providing any benefit to DIVCA's target communities.

Given that the Commission has adopted a strict interpretation of the rules regarding intervenor compensation and the provision of public hearings and opportunity for protest, it cannot now *extend* its authority beyond DIVCA's parameters regarding build-out by smaller franchise holders. Conversely, if the Commission is willing to reach beyond DIVCA and create lax standards for certain franchise holders, then it must be willing to adopt a similarly expansive approach regarding intervenor compensation, public hearings, and reporting requirements. The latter interpretation of the Commission's role is particularly pertinent given DIVCA's intent to benefit underserved communities, not just carriers hoping to streamline their franchise application process. The Commission cannot carry out DIVCA's objectives by making concessions to certain carriers but not to representatives of the communities the Act seeks to serve.

Therefore, Greenlining respectfully urges that the Commission maintain consistency in its implementation of DIVCA. Whether the Commission decides to adopt a ministerial role or a

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<sup>2</sup> D.07-03-014, p. 9-11.

more expansive one, Greenlining strongly believes it must do so consistently, when addressing all requests from all parties to this proceeding.

## **II. DISCUSSION**

### **A. BUILD-OUT REQUIREMENTS: EXCEPTIONS CANNOT CREATE THE RULE**

As the Division of Ratepayer Advocates (“DRA”) noted in its comments, franchise holders may not discriminate in the provision of their services based on the income of residents in their service areas.<sup>3</sup> Greenlining agrees with DRA that this provision applies to all franchise holders regardless of size. Therefore, the Commission cannot impose relaxed low-income build-out benchmarks on smaller carriers without violating both this anti-discrimination provision and DIVCA’s overall intent to increase video and broadband service to underserved communities.

Given that DIVCA not only allows franchise holders to receive an extension of the build-out requirements upon a showing of “substantial and continuous effort” to meet them,<sup>4</sup> but also allows for an outright exemption “when the cost to provide video service is substantially above the average cost of providing video service in that telephone service area,”<sup>5</sup> individual determinations of reasonableness and so-called “safe harbor” provisions for carriers serving less than 1,000,000 telephone customers are wholly unnecessary. Greenlining asserts that such provisions merely allow smaller carriers to excuse themselves from competition for underserved markets, precisely the markets DIVCA seeks to open. DIVCA’s extension and exemption provisions are more than sufficient to protect smaller carriers without sacrificing DIVCA’s primary objective of increasing service and options in underserved communities. Greenlining urges the Commission to hold all carriers to the same build-out standards, with exceptions

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<sup>3</sup> CPUC Code § 5890(a)

<sup>4</sup> CPUC Code § 5890(f)(4)

<sup>5</sup> CPUC Code § 5890(c)

available only when carriers demonstrate that they meet the required showings under DIVCA for extensions or exemptions.

The California Cable and Telecommunications Association (“CCTA”) notes in its comments that local government franchising authorities required cable operators to build out within 12-36 months, and operators were able to comply.<sup>6</sup> Further, CCTA notes technological, regulatory and financial advantages phone companies have over cable companies in terms of ability to build out. Given these factors, Greenlining agrees that there is little, if any, reason to relax the build-out benchmarks for smaller telephone operators beyond the benchmarks set for larger operators, which are already substantially relaxed (as compared to local franchise authority build-out requirements). Since cable companies under the local franchising system were able to build out significantly faster than the timelines set forth in DIVCA and since telephone companies should be able to build out even faster than cable companies due to the aforementioned advantages, Greenlining sees *no reason* for the Commission to sacrifice DIVCA’s ultimate policy goals by creating relaxed rules around anticipated exceptions that may never arise.

Furthermore, “case by case” determinations of whether build-out is occurring in a reasonably timely manner, in addition to being generally inefficient, would take the Commission even further away from the “ministerial role” envisioned by both the Commission and the carriers throughout this proceeding. This case-by-case system would also create very little incentive for small carriers to be ambitious in their build-out plans and actually compete for underserved markets, contrary to DIVCA’s and the legislature’s goals. If competition is to be the means to achieve DIVCA’s objectives, Greenlining submits it will be best fostered by setting

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<sup>6</sup> CCTA Opening Comments, p. 2

ground rules by which all carriers must play. Moreover, Greenlining submits that the existing extension and exemption provisions are more than sufficient to cover carriers' concerns over excessive costs, limited resources, inability to access certain households, and any other hurdle such carriers might encounter during the build-out process.

Greenlining therefore urges the Commission to prioritize the needs of underserved communities, as DIVCA intends, by imposing the same build-out requirements on all franchise holders regardless of size, and relying on the existing extension and exemption provisions to protect small carriers who may experience hardships during build-out. Greenlining also urges the Commission to uphold the stated intent of the legislature to bridge the digital divide for California's low-income communities.

## **B. REPORTING: TRANSPARENCY IS ESSENTIAL TO SUCCESS**

The comments of several carriers indicate a belief that reporting and other regulatory obligations are antithetical to DIVCA's stated goal of increasing competition. These comments argue that access and deployment of services should be promoted by voluntary efforts and market forces.<sup>7</sup> Greenlining strongly believes that this position misconstrues DIVCA's objective. DIVCA was created because certain communities, particularly low income and minority communities, are consistently left behind by market forces.

As other utilities have found, these presently-underserved communities are viable and healthy markets for service providers if such providers take the initiative to break into these markets. DIVCA merely directs franchise holders toward markets which will accrue benefits to franchise holders in the form of expanded customer bases. However, DIVCA's ultimate goal is to provide services to underserved communities, and the Commission cannot know whether

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<sup>7</sup> See Verizon Opening Comments, p. 4-6; Small LECs Opening Comments, p. 4-5; AT&T Opening Comments p. 1-3; SureWest TeleVideo Opening Comments, p. 5-6

these communities are actually being served unless it receives full and transparent information in the following key areas.

## **1. Technology and Capacity**

Greenlining supports the Joint Consumers' position that the Commission should require franchise holders to report on specific broadband and video technology available by census block or group, along with the broadband speed each kind of technology can deliver. Greenlining believes that this type of required reporting will ensure that all service areas have equal access to similar levels of functionality.<sup>8</sup> As the Joint Consumers note (and Greenlining supports), DIVCA requires that underserved communities be provided not only with access, but with services comparable in quality and kind to services currently available in other areas.<sup>9</sup> By failing to require reporting on both technology and capacity, the Commission will be taking a step away from its role as a leader in consumer protection, both in California and nationally.

## **2. Pricing and Access**

Greenlining supports DRA's position that required reporting must also include information on pricing and subscribership by market and/or census tract.<sup>10</sup> Access is meaningless if services deployed in certain neighborhoods are unaffordable or for any other reason under-utilized. As was made clear in testimony before the commission on November 30, 2006, quality, affordable video and broadband service is of the utmost importance to the survival and empowerment of low income communities currently suffering the effects of digital exclusion. David Glover, Executive Director of the Oakland Citizens Committee for Urban Renewal (OCCUR), noted in his testimony, "[w]e're actually talking about community survival.

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<sup>8</sup> Joint Consumers Opening Comments, p. 4-5. The Joint Consumers consist of the California Community Technology Policy Group, the Latino Issues Forum, and The Utility Reform Network.

<sup>9</sup> Joint Consumers Opening Comments, p. 4

<sup>10</sup> DRA Opening Comments, p. 3

There should be no playing with the yardstick by which people are measured to provide these types of services.” Greenlining respectfully requests the Commission remember that the priorities expressed during that meeting have traditionally been the Commission’s priorities as well, and it should implement reporting requirements with these in mind. Without information on pricing and usage in target areas, a carrier may appear to be satisfying DIVCA’s access goals without actually doing so. Such appearances will detract from, rather than further, DIVCA’s objectives.

### **3. Service to DIVCA’s Target Communities**

Greenlining also urges the Commission to adopt reporting requirements for franchise holders on their efforts to 1) close the digital divide;<sup>11</sup> 2) increase employment and management diversity; 3) create opportunity for small, minority-owned and women-owned businesses; and 4) provide full content access to underserved communities. Diversity in employment and management has always been a Commission priority. DIVCA also prioritizes diversity in video programming, to best serve “California’s diverse population and many cultural communities.”<sup>12</sup>

Without this key information, the Commission will be unable to determine whether franchise holders are making progress toward these important goals. Therefore, Greenlining strongly recommends that the Commission require reporting in all three of the above-identified areas, to ensure that DIVCA benefits underserved communities, and not only franchise holders.

### **III. CONCLUSION**

DIVCA’s primary purpose is not to facilitate competition for competition’s sake, but to utilize market competition to achieve its policy goals of extending video and broadband technology to underserved communities. Competition is the means toward this end. If the

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<sup>11</sup> CPUC Code § 5810(2)(E) specifies that closing the digital divide is a significant component of DIVCA’s intent.

<sup>12</sup> CPUC Code § 5810(1)(D). See also CPUC Code § 5810(1)(A).



Commission does not incentivize outreach into currently underserved communities, and is unable to determine whether DIVCA's goals are being met, franchise holders alone will reap the benefit of the state franchising system, rather than the communities the system was created to serve.

For all of the reasons stated above, Greenlining respectfully requests the Commission adopt Greenlining's recommendations for Phase II.

Dated: June 15, 2007

Respectfully submitted,

/s/ Robert Gnaizda

Robert Gnaizda

The Greenlining Institute

/s/ Thalia N.C. Gonzalez

Thalia N.C. Gonzalez

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**CERTIFICATE OF SERVICE**

I, Thalia N.C. Gonzalez, am 18 years of age or older and a non-party to the within proceeding. I am a resident and citizen of the State of California with the business address at the Greenlining Institute of 1918 University Avenue, Second Floor, Berkeley, CA 94704 and telephone number of 510-926-4002.

On June 15, 2007, I caused the following document:

**REPLY COMMENTS OF THE GREENLINING INSTITUTE ON PHASE II**

to be served upon all interested parties of record in R.06-10-005 named in the official service list via e-mail to those whose e-mail address is listed in the official service list and via first class mail with postage prepaid or facsimile to those whose e-mail address is not available.

I certify that the foregoing is true and correct.

Executed in Berkeley, California on June 15, 2007.

/s/ Thalia N.C. Gonzalez  
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**SERVICE LIST FOR R.06-10-005**

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